

**Letter of Findings Number: 08-0639P
Negligence Penalty
For Tax Years 2005-2008**

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ISSUE

I. Tax Administration–Negligence Penalty and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer operates a business in Indiana. After becoming aware that Taxpayer was misfiling its sales tax returns on a quarterly basis rather than a monthly basis, the Indiana Department of Revenue ("Department") issued proposed assessments for penalties and interest for the tax years 2005 through January of 2008. Taxpayer protests the imposition of ten percent negligence penalties and interest for the years at issue. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty and Interest.

DISCUSSION

The Department issued proposed assessments for ten percent negligence penalty and interest for the tax years in question. Taxpayer was required to remit sales tax on a monthly basis but in fact remitted on a quarterly basis during the period in question. Taxpayer protests the imposition of penalty and interest. Taxpayer states that it hired a professional to ensure compliance with Indiana's tax laws and that it always remitted Indiana sales tax. Once it was discovered that the professional had failed to comply with Indiana's tax laws, Taxpayer immediately contacted the Department to correct the situation. Taxpayer states that it remitted all base sales tax due, that it is now paying sales tax according to the tax laws of Indiana, and that it has hired a new corporate officer whose duties include ensuring compliance with Indiana's tax laws.

First, taxpayer protests imposition of interest. The Department refers to [IC 6-8.1-10-1\(e\)](#), which states:

Except as provided by [IC 6-8.1-5-2\(e\)\(2\)](#), the department may not waive the interest imposed under this section.

While Taxpayer did remit the sales tax, it was on a quarterly basis instead of monthly. The payments were late for two out of three of the months reflected in the quarterly returns. Therefore, the Department may not waive interest under [IC 6-8.1-10-1\(e\)](#).

Next, Taxpayer protests the imposition of penalty. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added.)

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added.)

In this case, Taxpayer incurred an assessment which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer does have a sales

tax collection and remittance system in place, and upon discovery of the professional's error contacted the Department to ensure that it would be in compliance in the future. Since Taxpayer was remitting sales tax, although on a quarterly basis rather than on a monthly basis, and since Taxpayer has taken strong measures to ensure future compliance with Indiana's tax laws, Taxpayer has established that its failure to remit sales taxes on a monthly basis was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is denied regarding imposition of interest. Taxpayer's protest is sustained regarding imposition of penalty.

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